

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

XAVIER OGLESBY,

Grievant,

v.

Docket No. 2017-2047-MAPS

**REGIONAL JAIL AND CORRECTIONAL FACILITY
AUTHORITY/SOUTHERN REGIONAL JAIL,**

Respondent.

ORDER DENYING DEFAULT

Grievant, Xavier Oglesby, filed a grievance dated April 7, 2017, against his employer, Respondent, Regional Jail and Correctional Facility Authority ("RJA"), stating as follows: "[i]n February I was the subject of a predetermination hearing at the end of which I was told that I would receive information about my sanctions. C/O Dakota Wickline's hearing was held just after mine. However, as of March 18 I hadn't gotten a response but was surprised to find that officer Wickline had and informed me of it. I waited to see his suspension begin on 3-2." Then, on an attached page, Grievant reiterated this and further stated that ". . . I feel that I should have been told as soon as Mr. Wickline was. I only received a letter of reprimand which resulted from this hearing on the 24 March 2017. I reject the letter as I don't feel that I deserve it being attached to my name as an employee nor do I deserve it being placed in my personnel file." As the relief sought, Grievant stated, "I want the letter of reprimand that resulted from the predetermination hearing removed from my personnel file." On or about June 15, 2017, Grievant filed another statement of grievance on which he indicated that he had not received a response following the level one conference and alleged Respondent was in default.

A default hearing was held on September 5, 2017, before the undersigned ALJ at the Raleigh County Commission on Aging in Beckley, West Virginia. Grievant failed to appear at this hearing, and he did not request a continuance. Grievant's representative, Jack Ferrell, Communication Workers of America, appeared in person. Respondent appeared by counsel, Celeste Webb-Barber, Assistant Attorney General. At the commencement of this hearing, Mr. Ferrell informed the ALJ that he had not spoken to Grievant, and that Grievant had not returned his phone calls. Grievant's representative made no request for a continuance, and suggested that the claim for relief by default be denied. This matter became mature for decision at the conclusion of the hearing. The parties did not ask for the opportunity to submit proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant made a claim for relief by default alleging that Respondent failed to issue a level one decision within the statutory time-frame. Grievant failed to appear in person at the hearing on his claim for relief by default, and he made no request for a continuance. Grievant's representative appeared in person, and explained that Grievant had not returned any of his telephone calls. Grievant's representative suggested that the claim for relief by default be denied. Grievant bears the burden of proof on his claim for relief by default, and no evidence was presented to support such. Grievant failed to prove his claim by a preponderance of the evidence. Accordingly, Grievant's claim for relief by default is DENIED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant filed his original statement of grievance on April 7, 2017, requesting a level one hearing.¹
2. A level one “conference/hearing” was conducted on May 11, 2017.
3. Respondent issued a level one decision on June 5, 2017. The Grievance Board received the same on June 8, 2017.
4. Grievant filed a claim for relief by default with the Grievance Board on June 15, 2017.²
5. The Grievance Board issued a Notice of Default Hearing on July 25, 2017, informing the parties that this matter would be heard on September 5, 2017, at 10:00 a.m. at the Raleigh County Commission on Aging in Beckley, West Virginia. Grievant, as well as his representative, was mailed a copy of this Notice at the address on record with the Grievance Board, which is the same address that appears on his statements of grievance.
6. Grievant did not request a continuance of the Default Hearing.
7. Grievant failed to appear in person at the Default Hearing held on September 5, 2017, and no evidence was presented to support his claim of relief by default.

Discussion

A grievant who alleges a default at a lower level of the grievance process has the burden of proving the default by a preponderance of the evidence. *Donnellan v. Harrison*

¹ The original statement of grievance bears the signature date of April 5, 2017, but it was hand-delivered to the Grievance Board for filing on April 7, 2017.

² This document bears the signature date of June 9, 2017. However, it was not post-marked until June 15, 2017. The Grievance Board recognizes the post-mark date as the date of filing.

County Bd. of Educ., Docket No. 02-17-003 (Sept. 20, 2002). “The grievant prevails by default if a required response is not made by the employer within the time limits established in this article, unless the employer is prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process.” W.VA. CODE § 6C-2-3(b)(1).

Grievant failed to appear in person, and no evidence was presented in support of his claim at the September 5, 2017, default hearing. Grievant did not ask the Grievance Board for a continuance of this hearing. Grievant’s representative appeared at this hearing, and informed the ALJ that he had not spoken with Grievant because Grievant had not returned any of his telephone calls. Grievant’s representative did not request a continuance of this hearing. Grievant’s representative then suggested the claim for relief by default be denied as Grievant had failed to appear. Respondent, by counsel, made no objection.

Grievant bears the burden of proof in this matter. Grievant did not appear at the default hearing, and no evidence was presented to support his claim for relief by default. Accordingly, Grievant has not met his burden. For the reasons set forth herein, Grievant’s claim for relief by default is DENIED.

The following Conclusions of Law support the decision reached:

Conclusions of Law

1. A grievant who alleges a default at a lower level of the grievance process has the burden of proving the default by a preponderance of the evidence. *Donnellan v. Harrison County Bd. of Educ.*, Docket No. 02-17-003 (Sept. 20, 2002).

2. “The grievant prevails by default if a required response is not made by the employer within the time limits established in this article, unless the employer is prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process.” W.VA. CODE § 6C-2-3(b)(1).

3. Grievant has failed to prove by a preponderance of the evidence his claim for relief by default.

Accordingly, Grievant’s claim for relief by default is **DENIED**.

If Grievant wishes to continue in the grievance process, Grievant may proceed to level two mediation by completing the applicable section of the grievance form and filing it with the Public Employees Grievance Board at 1596 Kanawha Boulevard East, Charleston, WV 25311, with a copy mailed to Respondent. This form must be filed with the Grievance Board within ten days of Grievant’s receipt of this Order on Default.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Order. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2008).

DATE: November 21, 2017.

Carrie H. LeFevre
Administrative Law Judge